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Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report on the human rights of migrants submitted by Gabriela Rodríguez Pizarro, Special Rapporteur of the Commission on Human Rights, pursuant to General Assembly resolution 57/218 and Commission resolution 2003/46.

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Report on the human rights of migrants submitted by the Special Rapporteur of the Commission on Human Rights

Summary

The present report is submitted pursuant to General Assembly resolution 57/218 and Commission on Human Rights resolution 2003/46.

During the period under review the Special Rapporteur participated in a number of conferences, seminars and consultations on issues relating to migration. The Special Rapporteur also held consultations with representatives of international organizations, non-governmental organizations (NGOs) and Governments on the promotion and protection of the human rights of migrants. The Special Rapporteur continued to receive information about the situation of migrants worldwide and to exchange communications with Governments.

The Special Rapporteur plans to visit Spain, Morocco, Belgium and Italy in the second half of 2003 and the first half of 2004. She received an invitation from the Government of Burkina Faso to visit in the first half of 2003. At the same time, the Special Rapporteur intends to visit Côte d'Ivoire and Mali in order to study the migration situation and dynamics in the region. She also plans to undertake an official visit to the Islamic Republic of Iran in February 2004.

Governments' strategies and policies in responding to the challenges posed by migration in its present dimensions have often failed to ensure respect for Governments' human rights obligations vis-à-vis migrants. Under these circumstances, the Special Rapporteur increasingly views as a priority the promotion of a human rights-based approach to activities and policies relating to migration issues.

During the period under review, the Special Rapporteur has observed that the strengthening of security policies and the tendency to consider migration as a matter falling under State security plans pose a threat to the human rights of migrants. The Special Rapporteur believes that migration must not be considered only a matter of security. The involvement of the ministries of foreign affairs, health, education, social welfare and labour, as well as civil society, in the development of national migration plans and policies is necessary in order to ensure the protection of the human rights and the dignity of migrants.

The Special Rapporteur emphasizes that increased international cooperation and dialogue for the development of human rights-informed migration policies and comprehensive, coordinated and harmonized systems of migration management are necessary to combat irregular migration, smuggling, trafficking and violations of the human rights of migrants.

The Special Rapporteur believes that strengthened cooperation between all relevant international organizations, with the growing involvement of the Office of the United Nations High Commissioner for Human Rights (OHCHR), is the best way to ensure that human rights will be mainstreamed into the work of the international community in the field of migration. This would include cooperation in policy development, training and capacity-building, among other areas. The Special Rapporteur notes the importance of the programmes of the International Labour

Organization (ILO) in many regions of the world on labour migration, migrant women, gender equity and the prevention of trafficking and would like to encourage increased cooperation between her mandate, OHCHR and ILO. The Special Rapporteur is also encouraged by the interest taken by the Secretary-General in the issue of migration.

The Special Rapporteur encourages strengthened follow-up to the recommendations of special procedures and treaty bodies concerning the human rights of migrants at the national and international levels. The Special Rapporteur welcomes the discussions initiated by OHCHR in this regard as follow-up to the Secretary-General's agenda for further change (A/57/387 and Corr.1).

The Special Rapporteur believes that in the context of strengthened cooperation, efforts should be made to develop guidelines and tools to assess migration policies in the context of existing international human rights norms. Such tools should serve as a basis for the provision of advisory services and technical cooperation for capacity-building and for enhanced international dialogue and cooperation for the development of a human rights-based approach to migration. All relevant United Nations agencies and departments and international organizations should be involved in this effort.

The Special Rapporteur recommends increased international assistance to promote wider adherence to, and implementation of, existing international instruments for the protection of the human rights of migrants. In this connection, the entry into force, on 1 July 2003, of the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families is a great advance towards the establishment of a comprehensive international legal framework for the protection of the human rights of all migrant workers. The Special Rapporteur recommends strengthened efforts on the part of the international community to promote its implementation and its application, including by studying the obstacles to its ratification.

The Special Rapporteur also encourages strengthened international cooperation and dialogue for the implementation of the Durban Declaration and Plan of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. She also supports the fostering of a positive image of migration and raising awareness of its positive potential.

With respect to counter-trafficking and smuggling, the Special Rapporteur recommends further study of the causes of these phenomena. She encourages OHCHR, the International Organization for Migration (IOM), ILO and the United Nations Development Fund for Women to continue their anti-trafficking activities and activities aimed at protecting the victims of trafficking at the national and regional levels.

The Special Rapporteur also encourages strengthened cooperation and exchange of information among all human rights mechanisms, including all relevant special procedures and treaty bodies, with regard to the situation of migrants. She welcomes in particular the exchange she had with the members of the Committee on the Elimination of Discrimination against Women (CEDAW). The recommendations, conclusions and observations of treaty bodies and special procedures in this regard should be taken into account by Governments, NGOs and international organizations in the formulation and implementation of activities, policies and programmes. They

should also serve as a tool for monitoring the follow-up and progress made in the protection and promotion of the human rights of migrants.

The present report contains recommendations to promote and protect the human rights of migrants throughout the migration process. The Special Rapporteur believes that the subject matter of such recommendations merits increased attention at the international and national levels. International support for the exchange and collection of good practices and successful experiences is also particularly encouraged in order to facilitate the development of tools for the promotion of a human rights-based approach to migration.

The Special Rapporteur emphasizes the need to strengthen measures to prevent irregular migration, including in countries of origin. In particular, the Special Rapporteur encourages States to ratify the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families and the Protocols supplementing the United Nations Convention against Transnational Organized Crime, those on trafficking in persons and smuggling of migrants. She also recommends that special efforts be undertaken to combat corruption of immigration officials and to eliminate impunity for members of trafficking and smuggling networks. The Special Rapporteur also recommends that countries of origin undertake efforts to provide adequate documentation and strengthened consular protection to their nationals abroad in order to prevent some of the violations outlined in the report.

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I. Introduction

1. The Special Rapporteur on the human rights of migrants, Grabiela Rodríguez Pizarro, submits the present report to the General Assembly pursuant to General Assembly resolution 57/218, entitled "Protection of Migrants", and Commission on Human Rights resolution 2003/46, entitled "Human rights of migrants".

2. In the present document the Special Rapporteur reports to the General Assembly on her activities during the period under review and on her main observations regarding the situation of the human rights of migrants.

II. Activities of the Special Rapporteur

3. During the reporting period, the Special Rapporteur participated in the following events:

(a) From 20 to 22 November 2002, the Special Rapporteur participated in the Hemispheric Conference on International Migration: Human Rights and Trafficking in Persons in the Americas, held in Santiago, where she spoke about the human rights dimension of trafficking in the Americas and existing protection mechanisms;

(b) From 3 to 5 December 2002, the Special Rapporteur travelled to Geneva for consultations with staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and to participate in the 84th session of the Council of the International Organization for Migration (IOM). At the meeting, the Special Rapporteur spoke about abuses suffered by migrants and about the need for a deeper discussion on migration management systems that were respectful of the human rights and dignity of migrants. She also participated in a parallel event organized by the Steering Committee for the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. On that occasion, the Special Rapporteur emphasized the need for a reliable and comprehensive legal framework for the protection of all migrant workers' rights and highlighted how the various provisions of the Convention would provide protection against widespread abuses;

(c) From 24 to 25 March 2003, the Special Rapporteur participated in the first International Seminar of Peruvian Communities Abroad (Seminario Internacional de Comunidades Peruanas en el Exterior), held in Lima, where she spoke about trends observed in migration policies and how they affected the human rights of migrants. In Lima, she also met with government representatives, representatives of the International Labour Organization (ILO) and financial institutions, and with academics;

(d) From 4 to 6 April 2003, the Special Rapporteur participated in the Third International Citizens Meeting, which had the theme "Towards a new form of citizenship: alternatives to a single discourse" and which took place in Barcelona, Spain. At the meeting the Special Rapporteur highlighted the challenges, as well as the opportunities, posed by globalization to the human rights of migrants;

(e) From 7 to 12 April 2003, the Special Rapporteur travelled to Geneva to present her report (E/CN.4/2003/85 and Add.1-4) to the fifty-ninth session of the Commission on Human Rights. She also held consultations with the United Nations High Commissioner for Human Rights, OHCHR staff and other relevant actors, including representatives of IOM, ILO, migrant groups and non-governmental organizations (NGOs), as well as government representatives. The Special Rapporteur's main report focused on the issue of administrative detention of migrants, while the addenda were devoted respectively to communications to and from Governments and her visits to Mexico, the border between Mexico and the United States of America and the Philippines;

(f) From 6 to 9 May 2003, the Special Rapporteur participated in the second Regional Workshop on Counter-Trafficking and Human Rights, organized by IOM and others in Bogota. The seminar was attended by academics and representatives of Governments, Latin American, North American, European and Asian NGOs and media from Bolivia, Brazil, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Peru, Spain, Thailand and the United States. The meeting's objective was to define clearly, according to international standards, the concepts of trafficking and smuggling, acknowledging the links between the two phenomena. During the meeting the Special Rapporteur briefed participants on the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and its relevance vis-à-vis the vulnerability of many migrants;

(g) From 7 to 9 May 2003, the Special Rapporteur participated in the first Continental Meeting on Globalization, Migration and Refuge (I° Encuentro Continental Sobre Globalización, Migración y Refugio) organized by the Latin American Council of Bishops, also held in Bogota. The meeting discussed the impact of globalization on migration and asylum in the Americas and provided an opportunity for an exchange of experiences on how the Catholic Church, in cooperation with civil society, could assist in improving the quality of life of migrants and refugees;

(h) From 26 to 30 May 2003, the Special Rapporteur participated in the seventh meeting of the Regional Conference on Migration — also known as Puebla Process — which was held in Cancún, Mexico. The Conference is a regional forum for dialogue and discussion on the phenomenon of migration in North and Central America;

(i) From 23 to 28 June 2003, the Special Rapporteur participated in the annual meeting of special rapporteurs of the Commission on Human Rights in Geneva;

(j) On 1 July 2003, she participated in an event to celebrate the entry into force of the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families;

(k) On 2 and 3 July 2003, the Special Rapporteur participated in the Berne Initiative consultations on an international agenda for migration management;

(l) On 10 July 2003, the Special Rapporteur participated in a meeting with the experts of the Committee on the Elimination of Discrimination against Women (CEDAW) organized by the United Nations Development Fund for Women (UNIFEM) in New York;

(m) In September/October 2003 the Special Rapporteur will also participate in a regional consultation with NGOs in Asia.

4. In establishing her programme of visits, the Special Rapporteur decided to give priority to European and African countries in order to maintain a geographical balance in carrying out her activities. In this connection, she will undertake visits to Spain, Morocco, Belgium and Italy in the second half of 2003 and the first half of 2004. The Special Rapporteur received an invitation from the Government of Burkina Faso to undertake a country visit in the first half of 2003. The Special Rapporteur replied that she would like to undertake a subregional visit in order to study its migration situation and dynamics, and to that end she requested invitations from the Governments of Côte d'Ivoire and Mali. She also sent a request to the Government of the Islamic Republic of Iran to undertake an official visit in February 2004.

5. The Special Rapporteur continued to receive information about the situation of migrants worldwide and to exchange communications with Governments. A summary of the communications sent during the reporting period, together with Governments' replies, will be submitted to the Commission on Human Rights at its sixtieth session. The main report of the Special Rapporteur to the sixtieth session of the Commission will focus on the situation of migrant domestic workers. In this connection, a questionnaire was sent to Governments, experts and NGOs in June 2003.

III. Human rights of migrants in 2003

A. General observations of the Special Rapporteur

6. During the period under review, the Special Rapporteur has observed that the strengthening of security policies and the tendency to consider migration as a matter falling under State security plans pose a threat to the human rights of migrants. Governments' strategies and policies adopted in response to the challenges presented by migration in its present dimensions have often failed to ensure respect for Governments' human rights obligations vis-à-vis migrants. Under these circumstances, the Special Rapporteur increasingly views as a priority the promotion of a human rights-based approach to activities and policies relating to migration issues.

7. The international community is demonstrating increasing interest in the issue of migration. The Special Rapporteur has observed with satisfaction the growing number of regional consultative forums on migration. These include the Puebla Process in North and Central America, the Budapest Process in Europe, the Manila Process and the Bangkok Declaration in Asia and the Migration Dialogue for Southern Africa (MISDA) Process. Beyond regional initiatives, efforts to promote international cooperation in this field have also been initiated. In this connection, the Special Rapporteur welcomes the decision of the ILO Governing Body to devote the general discussion of the International Labour Conference in 2004 to the topic of migrant workers, as well as the greater focus on human rights in the IOM international dialogue on migration policy. The Special Rapporteur also welcomes the Berne Initiative, a consultative process launched to assess the desirability and

feasibility of developing a set of guiding principles based on international law and best migration practices in order to increase inter-State cooperation.

8. At the level of the United Nations, an effort was made to identify the major challenges posed by the phenomenon of migration to States and the international community and to propose institutional arrangements to better deal with them. The Special Rapporteur is encouraged by this development.

B. Challenges to the protection of the human rights of migrants

9. The following paragraphs are devoted to outlining the observations and recommendations of the Special Rapporteur with respect to some of the main human rights challenges in the context of migration.

1. Preventing irregular migration and combating trafficking, especially of women and unaccompanied minors

10. The Special Rapporteur has observed several outstanding factors that impel people to search for improved living conditions abroad. These include widespread violations of human rights, unemployment, low levels of education, political instability, unequal distribution of wealth, lack of gender equity and natural disasters in countries of origin, as well as falsified information regarding work opportunities in countries of destination. When these forceful push-factors are coupled with restrictive asylum and immigration policies, there can be an increase in the use of alternative migration channels, including smuggling, with serious consequences for the human rights of the people involved.

11. Irregular migration is the main backdrop for human rights violations, exploitation and discrimination. The impossibility of denouncing abusive practices by employers for fear of arrest and deportation and the lack of any social and labour protection, coupled with the lack of access to health care, social services and legal assistance, make irregular migrants vulnerable to exploitation and all types of abuses, as the Special Rapporteur has extensively reported.

12. The Special Rapporteur is very concerned about the violations of the rights of migrants committed by networks that smuggle migrants and traffic persons, and has addressed this theme in various activities. Since the establishment of her mandate, the Special Rapporteur has referred to the definitions of smuggling and trafficking contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The two Protocols refer to two different phenomena within the same Convention. The distinction between the two is made clear in these documents: while the definition of trafficking contains the element of coercion and affirms that trafficking may occur within a context of regular migration, that of smuggling does not. The definition of trafficking emphasizes subsequent exploitation, whereas the definition of smuggling focuses on facilitating irregular entry of a person from one country to another.

13. The Special Rapporteur has observed that smuggling may increase the risk of trafficking. Migrants who have recourse to the services of smugglers may find themselves in a position of extreme vulnerability owing to their irregular situation, the debt they may incur in their countries of origin and the impunity with which trafficking and smuggling networks often operate. At times their undocumented status puts them in a situation where contracts are changed, or they are forced into degrading and humiliating jobs, often in conditions amounting to slavery. As a result, they go from being irregular migrants to being victims of trafficking. Although trafficking can also occur within countries, the Special Rapporteur always refers to these crimes within a context of international migration.

14. Another challenge is posed by the existence of mixed flows of asylum-seekers and migrants. Undocumented or irregular migrants often use the asylum procedures because they see it as the only way of obtaining a temporary permit to remain in the asylum country. At the same time, people with legitimate asylum claims do not apply for asylum for fear of being returned to their countries of origin upon denial of refugee status. The Special Rapporteur has noted with concern that the authorities of asylum countries often have scant knowledge of the eligibility requirements for asylum.

15. The complexity of the two interrelated phenomena has increased the vulnerability of those involved. The Special Rapporteur has noted that undocumented or irregular migrants are vulnerable to abuse, discrimination and exploitation in countries of transit as well as in countries of destination. Those using smugglers do so voluntarily, yet they are at great risk of abuse in the migration process, including extortion by corrupt migration or other law enforcement officials. Moreover, the inhumane conditions in which smuggling occurs puts migrants in extreme danger. As stated above, their irregular situation often makes them vulnerable to traffickers. Asylum-seekers using irregular migration channels to leave their countries of origin are in the same situation of vulnerability as undocumented migrants.

16. The Special Rapporteur believes that in order to address this complex situation, three sets of distinct, yet related and mutually reinforcing, measures are needed: measures to prevent irregular migration and fight smuggling networks; measures to combat trafficking and to protect its victims; and measures to preserve the integrity of the asylum protection system.

17. The Special Rapporteur notes that measures to prevent irregular migration include the development of immigration policies that take into account the reality of the labour market, thereby increasing opportunities for regular migration when there is a real demand for migrant labour; international cooperation for the development of work opportunities in the communities of origin of migrants; and the provision of information to potential migrants about work opportunities, regular migration channels and the risks of resorting to irregular migration channels.

18. In order to combat smuggling, the Special Rapporteur believes that the issues of impunity for criminal smuggling networks and corruption on the part of some immigration officials in countries of origin, transit and destination must be tackled, including by making smuggling a criminal offence under national legislation and by strengthening cooperation among relevant law enforcement agencies. These measures should be accompanied by tight control on recruitment agencies and by

regulating, through a licensing and registration system, private sector participation in the recruitment and placement of workers.

19. Comprehensive witness protection programmes in sending, transit and receiving countries are also an effective measure in combating illegal recruitment practices. The Special Rapporteur notes that such programmes, where they exist, are difficult to access as the requirements for eligibility are often very strict and the fear of prolonged detention and/or deportation upon denial of protection discourages many victims from denouncing illegal practices.

20. The Special Rapporteur believes that efforts to strengthen respect for States' obligations vis-à-vis refugees, as well as appropriate training of immigration officials on the asylum protection system and on international and national human rights obligations, would help in part to ensure strengthened protection for asylum-seekers. The Special Rapporteur is encouraged by increased discussions at the international level on ways and means of addressing the existing challenges to the asylum system, taking into account the present scope and dimension of the movement of people and the nexus between asylum and migration.

21. The Special Rapporteur considers that increased international dialogue and cooperation, as well as coordination of all relevant departments at the national level, including security, intelligence, border police, migration police and other law enforcement officials, are positive steps in combating trafficking.

22. The Special Rapporteur has repeatedly stated that the victims' needs for specific medical, psychological and legal assistance are often not taken into account. Victims of trafficking, including unaccompanied minors, are often detained and deported without regard to their status and without consideration of the risks to which they may be exposed if returned to their countries of origin. The Special Rapporteur has received information according to which, for fear of being deported or criminalized, victims of trafficking, especially women, often do not denounce their traffickers and do not seek protection from local authorities against their abusers.

23. The legislation of some countries provides for some forms of assistance and protection for victims of trafficking. However, in many cases, in order to obtain protection, victims have first to escape from their exploiters, cooperate with the Government in the investigation and demonstrate that their lives would be in danger if they were deported. Furthermore, many persons choose not to participate in existing witness protection programmes because detention often is a component of such programmes.

24. The Special Rapporteur believes that temporary residence permits, together with adequate medical, psychological, social and legal assistance and an adequate level of police protection, should be granted to all victims and their families, regardless of whether they are willing to cooperate with the judiciary in the prosecution of the traffickers. Furthermore, the Special Rapporteur believes that it is necessary to give victims a reasonably long period of reflection to decide whether to cooperate with the authorities. This would give them time to recover, build trust in those assisting them and cooperate in gathering intelligence about the modus operandi of traffickers.

2. Consular protection

25. The Special Rapporteur has repeatedly stated that countries of origin play an important role in protecting their nationals from violations of their rights during all phases of the migration process. She has also observed that there is often a lack of financing for consular protection by those countries; the balance between the remittances sent by migrants and the protection afforded to them by their consulates is often not in the migrants' favour. In this connection, the Special Rapporteur would like to stress that it is important to ensure that Governments make adequate representations to protect the rights of their migrant nationals, especially women and unaccompanied minors. It is also important to monitor the application of labour and social welfare laws of receiving countries, including questions of legal assistance and medical referral, and to provide assistance to migrants and their families to ensure that agencies and employers abide by their contractual obligations.

26. The Special Rapporteur observes that in countries of transit or destination where there are significant migration flows, there is often no coordinated consular policy, nor are there bilateral agreements between consulates. The Special Rapporteur has repeatedly recommended to Governments that in order to strengthen the protection of their citizens abroad, especially women, they should consider providing human rights and gender training for embassy and consular personnel and the deployment of specialized personnel, such as doctors, social workers and psychologists, to countries with a large number of migrants.

27. The Special Rapporteur reiterates that repatriation assistance in cases where migrants lose their jobs, wish to escape from abusive situations, or wish to be repatriated for health reasons should also be provided. Consulates and embassies should be financially empowered to assume these cases, as well as to assist in the repatriation of victims of trafficking at their express request. In particular, specific attention should be devoted and protection granted to unaccompanied minors.

3. Protection of migrants working in the informal sector

28. The Special Rapporteur has documented many cases of exploitation, mistreatment, discrimination and xenophobia against migrants, primarily women and especially those working in the private sphere, such as domestic workers. In many cases workers are forced to surrender their passports or other documentation to their employers. The employers are thus free to withhold them if the migrant worker threatens to quit or change jobs. The withholding of documentation, the debts frequently incurred by migrants in their country of origin, their lack of adequate information, the fear that they will be denounced to the authorities, the absence of medical and psychological counselling and support, as well as the absence of legal assistance on the part of consulates and embassies are some of the factors that contribute to making migrants working in the informal sector, especially women and minors, particularly vulnerable to violations. Many domestic employees work long hours for a miserable salary and under truly inhumane and degrading conditions that sometimes amount to slavery.

29. The Special Rapporteur welcomes the fact that some States have undertaken efforts to prevent the exploitation of and discrimination against migrant nationals abroad. Certain States have done this by, inter alia, adopting the policy of allowing recruitment only in countries that have a good human rights record, or by allowing the recruitment only of skilled workers to prevent employment in the sex industry or

in humiliating and degrading jobs. However, such efforts have at times been unsuccessful if they were not accompanied by agreements with the States of destination, especially where there was a strong sex industry or a strong demand for unskilled labour.

30. The Special Rapporteur has observed a need to give legal recognition to the work done by migrant domestic workers. She has emphasized that it is essential that workers in the informal sector, as well as their children, have access to social security, education, health-care services, legal aid, counselling and socio-economic benefits. Pre-departure information, mechanisms for monitoring and accessible complaint mechanisms are also necessary to ensure adequate protection from and prevention of abuses. The Special Rapporteur is particularly concerned about the existence in some countries of mail-order bride agencies and/or web sites and about the vulnerability of minors who have recourse to them, thereby becoming vulnerable to exploitation and trafficking. Special measures should be taken to protect persons against these risks.

31. Moreover, the Special Rapporteur emphasizes that efforts must be made to combat corruption and punish abusive employers. The first step in this direction is an inclusive and detailed employment contract that is written in a language that the migrant can understand. It should contain information with respect to the work site, the duration of the contract, the monthly salary, the working hours and the conditions of stay (including residency documents and work permit, suitable and sanitary living quarters, adequate food and medical services). It should also have a provision giving the employee the right to terminate the contract under specified conditions, as well as information on where to find assistance in case of problems.

4. National migration administrations

32. The Special Rapporteur notes that corruption often permeates migration administrations, resulting in the complete lack of protection for migrants and impunity for those responsible for violating their rights. The Special Rapporteur has received various testimonies of extortion and abuse of migrants, especially women, by officials. Moreover, she has frequently observed that ratified conventions are not always translated into national legislation. States must take into account the complex and comprehensive nature of corruption at all levels.

33. The Special Rapporteur has emphasized the need to provide adequate training and resources to the national migration administrations, border police and law enforcement agencies and officials dealing with migration matters. Instruction should go beyond theoretical teaching of national and international legislative provisions to action-oriented training. It should also include modules to raise awareness on the concrete problems faced by undocumented migrants and their vulnerability to human rights violations, as well as practical training in investigating criminal groups involved in smuggling and trafficking. Responsible officials and those dealing with migrants should also be trained to give migrants practical guidance and information. The Special Rapporteur recommends that they be sensitized with respect to the social, cultural and psychological difficulties encountered by migrants and to the human dimension of the migration phenomenon.

5. Interception/detention/deportation/repatriation

34. The Special Rapporteur devoted her main report to the fifty-ninth session of the Commission to the issue of administrative detention of migrants, as she is concerned about the vulnerability of migrants to deprivation of liberty and the violations they experience while in detention centres. There is in fact a tendency to criminalize infringements of immigration regulations and to punish them severely, while a great number of countries resort to administrative detention of irregular migrants pending deportation.

35. The Special Rapporteur regrets that deprivation of liberty is resorted to without due regard for the individual history of the persons in question. Often, victims of trafficking, including minors, are detained for infractions committed as a result of their situation as victims. Often, children and other vulnerable groups are detained in conditions that are detrimental to their physical and mental health, owing to the lack of facilities which ensure respect for their human rights. There is a tendency to allow immigration officials to decide whether to detain certain migrants and the legal grounds for the administrative detention of migrants are often too broad.

36. This situation is often encouraged by the absence of automatic mechanisms for judicial or administrative review. Moreover, the Special Rapporteur has observed that other procedural safeguards, such as access to interpreters and lawyers, the right to be informed of the grounds for detention, the right to have recourse to appeal mechanisms and the right to have consular or embassy representatives informed of the detention, are basic rights that are often denied to migrants. Legislation and practice allow administrative detention to be very lengthy or, at times, indefinite, even though the facilities built or used for this purpose are not equipped for long-term detention.

37. Infractions of immigration laws and regulations are often considered criminal offences under national legislation. With respect to unaccompanied minors, the Special Rapporteur has stressed that the detention of children should be permitted only as a measure of last resort, only when it is in the best interest of the child, and only for the shortest appropriate period of time and in conditions that ensure the realization of the rights enshrined in the Convention on the Rights of the Child. The Special Rapporteur also stresses the need to avoid the prosecution, detention and punishment of victims of trafficking for illegal entry or residence in the country or for the activities they were involved in as a consequence of their situation as trafficked persons. She further recommends that procedural safeguards and guarantees established by international human rights law and national law in criminal proceedings be applied to any form of detention.

38. The Special Rapporteur attributes the increase in the number of administrative detentions to the growing number of irregular migrants and the unilateral restrictive measures often adopted by States to stop or discourage these irregular flows. She suggests that measures to tackle the causes of irregular migration flows would be the most efficient way of addressing the problems relating to the administrative detention of migrants. Moreover, tackling these flows would help to ensure the integrity of national security while also helping to protect migrants' human rights.

39. The Special Rapporteur considers that the efforts to conclude bilateral and multilateral agreements to facilitate the movement of people and their return, when necessary, are also relevant in this regard. The deportation procedure can in fact be particularly time-consuming where there is no diplomatic representation of the country of citizenship of the alien, the country of destination is unable or unwilling to finance the deportation, or the State of origin or another country refuses to accept the migrant. In these cases, migrants awaiting deportation can remain in administrative detention for prolonged periods of time. Bilateral and multilateral efforts such as those mentioned above should provide for guarantees against arbitrary deportation and against possible violations or abuses upon deportation to countries of origin or third countries.

40. The Special Rapporteur notes that immigration and other officials dealing with migration matters must be properly trained in immigration law and the human consequences of detention, particularly where the grounds for detention are broad. Moreover, oversight of the application of immigration laws is needed. Gathering together separate, and at times conflicting, provisions contained in several administrative regulations or instructions and laws and clarifying and compiling these in one legislative text could help to provide better legal guidance to the relevant authorities. It would also have the effect of reducing the degree of discretion afforded to authorities.

41. The Special Rapporteur has documented numerous incidents that occurred in the process of deportation, some resulting in the death of the migrants involved. In this connection, the Special Rapporteur stresses that officials dealing with deportations must be trained to carry out their duties in a way that respects the rights and dignity of the persons involved. It should be stressed that migrants subjected to deportation procedures have most of the time only committed administrative infractions, but there is often a tendency to treat them like dangerous criminals.

42. The Special Rapporteur also emphasizes that special care must be taken with respect to children and women in the process of deportation, in order not to expose them to further risks. The Special Rapporteur has in fact documented incidents of women and children who were victims of violence and retaliation at the hands of police upon return to their countries of origin, cases of unaccompanied children who fell prey to traffickers in the process of repatriation, as well as cases of undocumented children who were arbitrarily returned to countries other than their own. Often, children who are not returned to the care of their families or communities see no choice but to seek ways to migrate again.

6. Reintegration

43. The Special Rapporteur stresses the importance of ensuring the reintegration of migrants who return to their countries, either voluntarily or involuntarily. Reintegration programmes should take into account the social and human aspect of migration, including the psychological effects of uprooting, the difficulties of reinsertion in the labour market, and problems linked to the existence of debts in the country of origin.

44. Upon their return, migrants often have no savings and few opportunities for employment. Many may have lost their skills after a long period of employment in a sector where these skills were not used. Many are forced to return to their countries prematurely and may still have debts in connection with their departure. Also, reintegration in the family is not always easy: not infrequently, spouses/partners have begun new relationships and children have suffered psychological problems owing to the absence of the parent. A dependency on migrant workers' incomes may have developed and families often do not engage in alternative income-generating activities. If the returnee finds a job, the wages are usually not enough to provide for the needs of his or her family. Often, even if migrants manage to save money and attempt to set up a business upon return, they fail because of lack of planning, training and inform.tion on business conditions in their countries. All of these circumstances frequently leave returning migrants with no choice other than to migrate again, through either regular or irregular channels.

45. The Special Rapporteur recommends the development of comprehensive reintegration programmes involving migrants, their families, Governments and civil society at large. Migrants and their families should be assisted to form organizations such as support groups and cooperatives. Migrants' communities should help in establishing business ventures and social enterprises that would generate long-term employment. Governments should help migrants to invest their savings by, for example, providing incentives for business development and business and management training. If migrants were provided with incentives to return to their countries of origin upon completion of their contracts, the chances of their overstaying their visas or work permits — thus becoming irregular migrants vulnerable to exploitation — would decrease.

46. The Special Rapporteur has observed with concern that often migrants, including those deported, return to their countries of origin without savings and without the money earned while in detention centres. Efforts should be made to combat extortion, pillage and illegal taxation.

47. The Special Rapporteur has noted that often the money earned by migrants is not used for productive activities, for example for the generation of jobs or for the development of local communities in countries or areas of origin. This can be due to several factors, including the difficulties encountered in transferring money, especially for irregular migrants, and the costs associated with it. Safe, secure and accessible means of transferring remittances should be provided. If migrant workers contribute to social security schemes, it is important to ensure that contributions and benefits can be transferred back to the country of origin, including through specific agreements between countries of origin and destination.

48. The Special Rapporteur believes that the social and psychological impact of migration on migrants and their families should also be cushioned. To this end, both States of origin and States of destination should undertake efforts to ensure better communication and contacts between migrants and their families, including by facilitating visits.

49. The Special Rapporteur suggests that Governments should also increase efforts to implement registration systems for their migrating citizens and monitor their return. That would also make it possible to monitor the problems faced by returnees, and as such to develop appropriate strategies to facilitate their social and economic integration.

7. National human rights institutions and NGOs

50. National human rights institutions, NGOs and academics can play a crucial role in the protection of the human rights of migrants by analysing national legislation, monitoring its impact on the rights of migrants and making concrete recommendations in that regard. Monitoring the implementation of national legislation by competent authorities and agencies is also crucial as often, abuses, arbitrary treatment and discrimination against migrants are justified by invoking existing legislation and/or regulations. National human rights institutions can also make very valuable contributions to the development of national policies that have an impact on the human rights of migrants. They can also encourage dialogue at the national level and raise awareness about the situation of migrants. Through campaigns and public activities, national human rights institutions can also help fight negative stereotyping and promote a positive image of migration, thereby preventing racism and xenophobia.

51. National human rights institutions and NGOs can provide legal and psychological assistance to migrants. They can assist migrants who wish to file complaints by facilitating contacts with relevant agencies and authorities. They can also assist them in legal and administrative proceedings against the authorities and monitor the evolution of individual cases. In that connection, the Special Rapporteur believes that it is important that representatives of national human rights institutions visit migrant detention centres or other detention facilities where migrants are held in administrative detention.

IV. Good practices observed by the Special Rapporteur

52. In discharging her mandate, the Special Rapporteur has come across a number of interesting initiatives, projects and activities, implemented by Governments and civil society, to address the challenges referred to in chapter II of this report. The examples mentioned below are not exhaustive. However, the Special Rapporteur believes that it is important to increase efforts to exchange information on the ways in which Governments, NGOs and international and regional organizations around the world are trying to promote respect for the human rights of migrants throughout the migration process.

Prevention of irregular migration and combating trafficking

53. In some countries in Asia, commissions or committees on irregular migrant workers have been set up to undertake studies on occupation and employment structures to determine if irregular migrants could fill the vacancies in the labour market. In follow-up to the visit of the Special Rapporteur, the Government of Mexico reported that it had implemented a Human Development Opportunities Programme for the promotion of local development in order to prevent irregular migration. The programme is inter-institutional and aims at developing capacities in the poorest communities by direct assistance in the fields of health, food and education. The Women's Institute also participates in the Programme.

54. Some interesting measures proposed to combat illegal recruitment and other practices were brought to the attention of the Special Rapporteur during her visit to the Philippines. They included the creation of anti-illegal recruitment desks in every city, the implementation of a witness protection programme, the speedy resolution of illegal recruitment cases, the creation of a pool of prosecutors to deal with such cases, a tightening of departure checks at all international airports, and the designation by the Supreme Court of special courts to hear and decide illegal recruitment cases.

55. Dialogue and international cooperation are essential in order to combat trafficking. Initiatives such as the National Seminar on the Human Rights of Ecuadorian Migrants, held in Cuenca in February 2001 and attended by representatives of civil society organizations, the Ministry for Foreign Affairs and IOM, are extremely helpful. During her visit to the Philippines the Special Rapporteur learned with appreciation that bilateral and multilateral agreements were being sought so that victims of human trafficking would not be treated as offenders. As part of the Puebla Process, a network of the immigration officials of all Central American countries was created to strengthen cooperation in the fight against trafficking. In Bangkok, an international law enforcement agency was established to serve as a regional training centre for law enforcement and to facilitate information-sharing for the suppression of transnational crime.

56. In the Philippines, the Centre for Transnational Crime has the task of formulating and implementing a concerted programme of action involving all law enforcement, intelligence and other government agencies for the prevention and control of, inter alia, trafficking in women and children, in particular through improved coordination, research, and the collection and centralization of data. Some countries have established governmental working groups to develop national strategies against the trafficking and smuggling of persons.

57. The Government of Thailand has developed guidelines for relevant agencies to be applied to women and children who are victims of trafficking, in order to establish a common understanding and standard practices among national agencies concerned. The Government of Croatia has set up a national Committee to Combat Trafficking in People. In some countries, specific plans of action have been formulated to ensure more coordination among competent ministries and departments in the fight against trafficking and smuggling. Many Governments have involved NGOs in these initiatives, including through their inclusion in ad hoc interdepartmental/ministerial groups. In Sri Lanka, NGOs, government agencies and migrants themselves have created a forum to discuss counter-trafficking measures. In Colombia, rehabilitated former victims of trafficking participate in similar efforts.

58. In the Netherlands, victims of trafficking are temporarily regularized and given protection and support so that they can decide whether to cooperate with law enforcement authorities. In Belgium, the Act on Human Trafficking provides that victims of trafficking should be granted residence permits and social assistance if they agree to testify against the perpetrators. In January 2002, the "T" visa programme for victims of trafficking was created in the United States. It is a procedure for attaining permanent residency status for certain trafficking victims who cooperate with law enforcement agencies in the prosecution of those responsible for their enslavement. After three years under this status they may apply for permanent residency. In Belgium, Italy and the Netherlands, victims are given a

reflection period and a temporary residence permit to decide whether to cooperate in the prosecution of traffickers.

59. In December 2002, ministers from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, the Republic of Moldova, the former Yugoslav Republic of Macedonia, Turkey and Yugoslavia agreed to improve the identification of trafficked victims, refrain from immediately expelling possible victims of trafficking, refer possible victims to shelters and provide them with social, legal and health assistance.

Consular protection

60. In view of the problems confronted by irregular migrants transiting through Mexico and of the inadequate consular representation of their countries of origin, within the framework of the Puebla Process it was decided that a Central American consulate would be established in Veracruz, Mexico. If staffed by personnel with expertise in migration questions, particularly with regard to consular protection, such consulates could considerably enhance the level of protection provided to migrants and prevent abuses and violations. Along the border with the United States, Mexican consulates keep a record of incidents in which Mexican migrants have suffered and seek reparation for the violation of their rights. Also as part of the Puebla Process, a network of consular protection was established in all Central American countries. Migration authorities and NGOs are part of this network which, among other things, favours the exchange of information and the development of policies and proposals to combat trafficking.

61. In the Philippines, the Special Rapporteur learned about the Overseas Comprehensive Social Service Package, which provides medical, legal and counselling services in identified countries with large concentrations of Filipino migrants. This involves the deployment of social workers and medical practitioners who provide services on the spot. The Government also initiated efforts to establish arrangements with counterparts and NGOs in other countries to provide assistance to Filipinos in distress, particularly women and children, who require temporary shelter, counselling, repatriation and immediate medical treatment. Also, embassies of the Philippines issue within the country travel advisories and information on labour and employment conditions.

62. One valuable initiative that was brought to the attention of the Special Rapporteur is the establishment, upon the initiative of the Ministry of Foreign Affairs of Peru, of Consultation Councils (Consejos de Consulta) in all Peruvian consulates. The object is to provide for dialogue and consultation between Peruvian communities abroad and the Head of the Consular Office on issues relating to the improvement of consular services, protection tasks and the integration of Peruvians in the communities in which they live.

Prevention of violations and protection of migrants working in the informal sector

63. In some Asian countries the law provides that the domestic worker contract govern the terms of employment, salary, rest days and medical benefits. In some cases, it is obligatory for employers of foreign domestic workers to cover their workers under personal accident insurance. Some countries have established toll-free telephone numbers to provide information to foreign domestic workers

concerning issues such as home leave, procedures for changing employers and the cost of repatriation. Information kits and handbooks are published for employers and foreign workers. Systems to better control recruitment agencies include accreditation systems, which ensure that the agencies meet minimum business and ethnical standards. In Kuwait, for example, the Bureau for Domestic Workers was established to oversee agencies involved with recruitment, and specific conditions were imposed on employers, including the payment of a deposit to the competent ministry that could be used by the worker to return to his or her country. Furthermore, all suits filed by domestic workers under the Labour Code were exempt from court fees. The Special Rapporteur notes with satisfaction that in Costa Rica migrant workers, regardless of their migratory status, have access to the labour court to denounce abuses of their labour rights.

64. Efforts to build on already existing good initiatives and to strengthen protection through renewed partnership are also valuable. The Special Rapporteur participated in the Regional Summit on Foreign Migrant Domestic Workers held from 26 to 28 August 2002 in Colombo. Representatives of Governments, trade unions, NGOs and international organizations also participated in the meeting. The outcome of the meeting was the Colombo Declaration, published in December 2002. The Summit provided a very good opportunity to develop a framework for dialogue based on the principles of respect for human rights without discrimination, in order to ensure the recognition, protection and dignity of foreign domestic workers. In February 2003, ILO organized the Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking.

National migration administrations

65. The establishment of specialized groups with the task of providing information and guidance to migrants in Mexico was welcomed by the Special Rapporteur as an innovative form of protection in the management of trans-frontier migration. Also, the Special Rapporteur learned with satisfaction that the Mexican National Institute for Migration (Instituto Nacional de Migración) has initiated a campaign against extortion and abuse against migrants. It includes the creation of a web site on migrants' rights, a radio campaign for the protection of the human rights of nationals abroad and the organization of a workshop on the human rights of migrants with participants from several areas, including law enforcement and relevant government departments.

Detention/deportation

66. With respect to detention, the recommendations of the Special Rapporteur are contained in her main report to the fifty-ninth session of the Commission on Human Rights (E/CN.4/2003/85). As a follow-up to her visits and her communications with Governments, the Special Rapporteur received information that several countries were devoting resources to improving the conditions of migrants deprived of their liberty and to building migrant holding centres that are respectful of the rights and dignity of the detainees.

67. During her visit to the border between Mexico and the United States, the Special Rapporteur learned about local bilateral agreements that regulate the timetables for deporting women and unaccompanied minors in order to avoid their

deportation during the night, which would expose both groups to violence and abuse. The Government of Thailand is undertaking efforts in cooperation with neighbouring countries to ensure that children are returned directly to the care of their families or communities.

Reintegration

68. In some Asian countries NGOs have initiated interesting programmes such as videoconferences and other services to facilitate communication between migrants and their families at low cost. In Thailand, NGOs have organized training in the use of communication technologies for migrants. Also, in order to cushion the psychological effects of migration on the families of migrants, teaching modules on the situation of migrants and the positive and negative effects of migration have been used in some schools.

69. In Bohol, the Philippines, NGOs, in cooperation with municipal authorities and the central Government, initiated programmes aimed at involving the families of migrants in income-generating programmes and cooperatives for the productive investment of remittances.

70. An increasing number of countries, including Ecuador, Peru and the Philippines, have implemented programmes and established policies that facilitate the transfer of remittances at low cost and provide for a percentage of them to be devoted to productive investment in local communities, with a view to developing local capacities in migrants' communities of origin. In some cases, a fixed amount of remittances transferred through State banks is invested to increase and strengthen consular protection or to provide credit at low interest rates for the creation of cooperatives and other productive activities.

National human rights institutions

71. Some ombudsmen offices have been very active in monitoring compliance of national migration legislation with international and national human rights norms. The Ombudsman (Defensor del Pueblo) of Bolivia, for example, obtained the repeal of some provisions of the Migration Law by the Constitutional Court on the grounds that they restricted migrants' enjoyment of their fundamental rights.

72. Several national human rights institutions, including the Greek National Commission for Human Rights, have launched campaigns for the ratification of the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families. The Australian Human Rights and Equal Opportunities Commission presented proposals for human rights-informed asylum and migration management policies. The Ombudsman of Spain has also developed impressive measures for the protection and promotion of the human rights of migrants.

73. The Ombudsman of Ecuador has opened offices in the United States and in Spain in order to provide legal advice to Ecuadorian migrants residing in those two countries. The offices work in close cooperation with Ecuadorian consulates. The Ombudsman of Bolivia coordinates with the ombudsmen offices of host countries in order to facilitate the processing of individual cases. A specific agreement to that end was signed by the Ombudsman of Bolivia and the Ombudsman of Argentina.

V. Conclusions and recommendations

74. **The economic contribution made by migrants to both countries of origin and of destination is widely recognized. Remittances sent to countries of origin represent a valuable and positive component of migration, particularly if they are utilized to develop local capacities in communities of origin. With the feminization of migration, many more women are leaving their homes to work abroad and represent the main source of income for their households. Nevertheless, the Special Rapporteur observes that economic benefits often overshadow the valuable social and cultural contributions of migrants. As experts concur that migration flows will grow at a rapid pace in the coming years, it is essential to place emphasis at the national and international levels on the human face of migration, taking a human rights-based approach to the phenomenon.**

75. **The Special Rapporteur believes that migration must not be considered only as a matter concerning national security. The involvement of the ministries of foreign affairs, health, education, social welfare and labour, as well as civil society, in the development of national migration policies and plans is necessary in order to ensure the protection of the human rights and dignity of migrants.**

76. **The Special Rapporteur emphasizes that increased international cooperation and dialogue for the development of human rights-informed migration policies and comprehensive, coordinated and harmonized systems of migration management are necessary to combat irregular migration, smuggling, trafficking and violations of the human rights of migrants. Such policies and systems have to take into account numerous overlapping, interconnected policy areas such as human rights, demography, trade practices, employment policies, security-related issues and development cooperation. Tackling only one or some of the aspects of the migration phenomenon without taking into account its present complex nature can represent a threat to the human rights and dignity of migrants, as well as to the integrity of the asylum regime. For this reason, it is essential that different governmental ministries and departments, civil society, national human rights institutions and international organizations all participate in efforts to address the challenges posed by contemporary migration in all its dimensions.**

77. **The Special Rapporteur was encouraged by the words of the General Director of IOM in his address to the Commission on Human Rights at its fifty-ninth session. The suggestion that cooperation between IOM and OHCHR should be strengthened is welcome. Strengthened cooperation between relevant international organizations, with the growing involvement of OHCHR, is the best way to ensure that human rights will be mainstreamed into the work of the international community in the field of migration. This would include cooperation in policy development, training and capacity-building, among other areas. The Special Rapporteur also notes the importance in many regions of the world of ILO programmes on labour migration, migrant women, gender equity and the prevention of trafficking and encourages greater cooperation between her mandate, OHCHR and ILO. The Special Rapporteur is also encouraged by the interest taken by the Secretary-General in the issue of migration.**

78. **The Special Rapporteur encourages strengthened follow-up to the recommendations of special procedures and treaty bodies concerning the human rights of migrants at the national and international levels. She welcomes the discussions initiated by OHCHR in this regard as follow-up to the Secretary-General's agenda for further change (see A/57/387).**

79. **The Special Rapporteur believes that in the context of strengthened cooperation, efforts should be undertaken to develop guidelines and tools to assess migration policies in the context of existing international human rights norms. Such tools should serve as a basis for the provision of advisory services and technical cooperation for capacity-building and for enhanced international dialogue and cooperation for the development of a human rights-based approach to migration. All relevant United Nations agencies and departments and international organizations should be involved in such efforts.**

80. **The Special Rapporteur recommends increased international assistance for wider adherence to, and implementation of, existing international instruments for the protection of the human rights of migrants. In this connection, the entry into force on 1 July 2003 of the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families is a great advance towards the establishment of a comprehensive international legal framework for the protection of the human rights of all migrant workers. The Special Rapporteur recommends strengthened efforts on the part of the international community for the promotion of its implementation and its application, including by studying the obstacles to its ratification.**

81. **The Special Rapporteur also encourages strengthened international cooperation and dialogue for the implementation of the Durban Declaration and Plan of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and the fostering of a positive image of migration and awareness of its positive potential.**

82. **The Special Rapporteur recommends further study of the causes of trafficking and smuggling. She also encourages OHCHR, IOM, ILO and UNIFEM to continue to undertake anti-trafficking activities and activities aimed at protecting the victims of trafficking at the national and regional levels.**

83. **The Special Rapporteur encourages strengthened cooperation and exchange of information among all human rights mechanisms, including all relevant special procedures of the Commission on Human Rights and treaty bodies, with regard to the situation of migrants. She welcomes in particular the exchange she had with the members of CEDAW. The recommendations, conclusions and observations of treaty bodies and special procedures should be taken into account by Governments, NGOs and international organizations in the formulation and implementation of activities, policies and programmes; they should also serve as a tool for monitoring the follow-up and progress made in the field of the promotion and protection of the human rights of migrants.**

84. **The present report contains specific recommendations to promote and protect the human rights of migrants throughout the migration process. The Special Rapporteur believes that the subject matter of such recommendations**

merits increased discussion at the international and national levels. She also encourages international support for the collection and exchange of good practices and successful experiences in order to facilitate the development of tools for the promotion of a human rights-based approach to migration.

85. **The Special Rapporteur concludes by emphasizing the need to strengthen measures to prevent irregular migration, including in countries of origin. In particular, the Special Rapporteur encourages States to ratify the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families and the two Protocols supplementing the United Nations Convention against Transnational Organized Crime. She also recommends that special efforts be undertaken to combat corruption among immigration officials and eliminate impunity for trafficking and smuggling networks. The Special Rapporteur also recommends that countries of origin undertake efforts to provide adequate documentation and strengthened consular protection to their nationals abroad in order to prevent some of the violations outlined in this report.**